

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #96-02**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

The application of sales and use tax to the sale and rental of certain medical products to individuals, medical institutions, and health care providers.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The Company sells and rents a variety of medical products and supplies, including ostomy products, oxygen, drugs and medications, and infusion therapy foods. The Department understands infusion therapy foods to be liquid foods which are fed to patients, who are unable to swallow or digest, through tubes. The Company's customers include individuals, health care providers (e.g., doctors), and medical institutions (e.g., hospitals, nursing homes, and clinics). The Company obtains a doctor's prescription for all sales to individuals. In general, sales by the Company to health care providers or medical institutions are not supported by copies of prescriptions. It is, however, the understanding of the Company that drugs and medication sold to these entities will be dispensed to patients pursuant to chart orders by a licensed practitioner of the healing arts.

The Company seeks clarification regarding the manner in which certain exemptions in the sales and use tax apply to specific transactions.

QUESTIONS

1. Does the exemption afforded ostomy products under T.C.A. Section 67-6-317 apply if the sale of such products is to medical institutions or health care providers for use in the treatment of human beings?
2. Does the exemption afforded oxygen under T.C.A. Section 67-6-318 apply to bulk purchases of oxygen and related delivery systems by medical institutions and health care providers for use in the treatment of human beings when administered pursuant to chart orders, and, if exempt, what documentation must a vendor secure to support an exempt transaction for audit purposes?
3. Does the exemption afforded prescription drugs under T.C.A. Section 67-6-320 apply to the purchase of nonlegend drugs by medical institutions or health care providers to be used in the treatment of human beings?
4. Does the exemption afforded prescription drugs under T.C.A. Section 67-6-320 apply to the purchase of nonlegend drugs by a patient pursuant to the recommendation of a licensed practitioner of the healing arts?
5. Does the exemption afforded prescription drugs under T.C.A. Section 67-6-320 apply to the sale of infusion therapy foods which are prescribed by a licensed practitioner of the healing arts?

RULINGS

1. Sales to medical institutions and health care providers of ostomy products for use by persons who have had colostomies, ileostomies, or urostomies are tax exempt.
2. Sales to medical institutions and health care providers of oxygen and related delivery systems for use in the treatment of human beings pursuant to chart orders are tax exempt. Only appropriate invoices are required to support the exemption.
3. The sale of nonlegend drugs to licensed practitioners of the healing arts is exempt if the drugs are to be used in the treatment of human beings. The sale of nonlegend drugs to medical institutions is exempt if the drugs are to be issued by a licensed pharmacist for use in the treatment of a human being pursuant to a prescription.
4. The sale of nonlegend drugs to a patient pursuant to the recommendation of a licensed practitioner of the healing arts is subject to sales tax.
5. The sale of infusion therapy foods to a physician for use in the treatment of a human being is tax exempt. The sale of infusion therapy foods to a medical institution is exempt if the product is to be issued by a licensed pharmacist pursuant to a prescription.

ANALYSIS

1. T.C.A. Section 67-6-317 provides as follows:

There is exempt from the tax imposed by this chapter the sale of ostomy products or appliances for use by persons who have had colostomies, ileostomies or urostomies.

This exemption, by its terms, is not limited to sales to patients. Medical institutions and health care providers may also purchase ostomy products exempt from sales tax so long as the products are for use by persons who have had colostomies, ileostomies, or urostomies.

2. T.C.A. Section 67-6-318 provides as follows:

There is exempt from the tax imposed by this chapter any sales of oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and equipment necessary to administer such oxygen.

The sale of oxygen for the medical treatment of a human being is exempt. A distributor who sells oxygen and the related equipment to medical institutions and health care providers may presume the oxygen will be for the treatment of a human being. The distributor need not secure any documentation other than invoices establishing that the oxygen and related equipment was sold to a medical institution or health care provider.

3. T.C.A. Section 67-6-320 provides as follows:

(a) There is exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.

(b) There is also exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

The sale of nonlegend drugs to health care providers is not exempt under T.C.A. Section 67-6-320 unless the drug is used by a practitioner of the healing arts licensed by the state of Tennessee in the treatment of a human being. The sale of nonlegend drugs to medical institutions is exempt under T.C.A. Section 67-6-320 if the drugs are to be issued by a licensed pharmacist pursuant to a prescription. Drugs which are sold by a licensed practitioner directly to a patient for home use are not exempt under the statute.

The statute exempts non-legend drugs as well as legend drugs. Feldman v. Huddleston, 1995 Tenn. App. LEXIS 447. However, a prescription is essential at some point for the

drug or medicine to be exempted. It is posited under the facts that drugs sold by the Company to medical institutions are administered directly to patients under doctor's orders. The exemption would apply in this instance if the drug is issued by the hospital pharmacy. Similarly, it is posited that drugs sold to health care providers are administered pursuant to doctor's orders. The exemption would then also apply.

4. The purchase of nonprescription drugs by a patient pursuant to the recommendation of a practitioner of the healing arts licensed by the state of Tennessee is not exempt from sales tax. The exemption is limited to drugs or medicines which are prescribed; the exemption does not extend to products which are recommended.

5. Infusion therapy foods may be exempt prescription drugs under certain circumstances. In order to qualify for the exemption afforded prescription drugs, the infusion therapy foods must first, in fact, be a drug or medication. The term "drug" is not defined within the sales and use tax code, however, the Tennessee Food, Drug and Cosmetics Act defines drug to mean "[a]rticles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals." T.C.A. Section 53-1-102(9)(B). Infusion therapy foods are a drug under this definition. Infusion therapy foods are therefore exempt if sold to a physician for use in the treatment of a human being. T.C.A. Section 67-6-320(b). Infusion therapy foods are also exempt as a drug or medication if sold to a medical institution if the product is to be issued by a licensed pharmacist pursuant to a prescription. T.C.A. Section 67- 6-320. Foods or food supplements used in the treatment of obesity are not within the exemption. See, Feldman v. Huddleston, 1995 Tenn. App. LEXIS 447.

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